

FEB 1 2005

ARIZONA BOARD OF APPEALS
BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

In the Matter of:

Case No. 1709

Leland G. Gary,
Certified General Appraiser,
No. 30948**AMENDED CONSENT AGREEMENT
AND ORDER OF DISCIPLINE**

In lieu of further litigation, and in resolution of the case herein, the Arizona State Board of Appraisal (the "Board") and Leland G. Gary ("Respondent") hereby enter into the following Consent Agreement and Order of Discipline.

JURISDICTION

1. The Board is the state agency authorized pursuant to A.R.S. § 32-3601, *et seq.*, and the rules promulgated thereunder, found in the Arizona Administrative Code ("A.A.C.") at R4-46-101 *et seq.*, to regulate and control the licensing and certification of real property appraisers in the State of Arizona.

2. Respondent is the holder of License No. 30948, issued by the Board on December 21, 1998, as a Certified General Appraiser in the State of Arizona. This license permits Respondent to perform residential real property appraisals and appraisal reviews in the State of Arizona.

3. The Board has personal and subject matter jurisdiction over Respondent pursuant to A.R.S. § 32-3601, *et seq.*

FINDINGS OF FACT

4. The subject property in this case is located at West Side Highway 87 at Deer Creek in Rye, Arizona. The appraisal report has a date of value of September 12, 2003.

5. Respondent's workfile was incomplete as it did not contain supporting data for the cost approach or depreciation, there was no analysis of the adjustment process, and there was no data for the highest and best use analysis.

6. The appraisal report did not state the intended user and did not clearly state the intended use.

7. The appraisal report did not provide an opinion of a reasonable exposure time linked to the value opinion.

8. Respondent did not properly identify the scope of work necessary to complete the assignment.

9. There was no statement as to the date of the report. Only the effective date was disclosed, and the workfile data disclosed dates after the effective date of value.

10. Respondent failed to cite the source for the appraisal report's definition of value.

11. Respondent failed to analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraisal report's stated highest and best use. Respondent incorrectly relied exclusively on unsupported costs and unsupported assumptions on effective age and remaining life.

12. Respondent's cost approach was not supported by the workfile or other information in the report.

13. Respondent did not adequately adjust for or disclose the superior features of the development sales cited as comparables.

14. Statements made in the appraisal report regarding Development Property Sales No. 2 and No. 3 were misleading, and it appears that Respondent did not inspect the sales cited as comparable.

15.	Respondent did not provide adequate explanation or support for the adjustments made to the commercial sales cited as comparable.
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16. The commercial property sales cited as comparable by Respondent range from 0.59 acres to 1.48 acres in comparison to the subject's 11.25 acres of the proposed development. Using the smaller commercial property sales as comparables for the much larger subject property is not credible and is misleading.

17. The appraisal report fails to disclose the subject's pending sale at \$2,366,000 including personal property.

18. The report fails to analyze the price of the pending sale of the subject against the appraisal report's value conclusion of \$3,305,000.

19. The use of lump-sum adjustments similar to residential form adjustment process, lack of discussion in support of or explanation of the adjustment process, limited statements of analysis, the descriptions of the sales cited, lack of narrative reconciliation, area analysis, highest and best use, and restatement of the certification and other parts of the report without amendment show a lack of competency.

CONCLUSIONS OF LAW

20. The conduct described in paragraphs 4 through 19 above constitutes a violation of A.R.S. §§ 32-3631(6) (violation of any of the standards of the development or communication of appraisals as provided in this chapter); and (7) (negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal). An appraiser's conduct is negligent if it falls below the recognized standard of care of good appraisal practice.

21. Pursuant to A.R.S. § 32-3635, Standards of Practice, a certified or licensed appraiser in the State of Arizona shall comply with the standards of practice adopted by the Board. The Standards of Practice adopted by the Board are codified in the Uniform Standards of Professional Appraisal Practice ("USPAP") edition applicable at the time of the conduct described.

22. Pursuant to A.A.C. R4-46-401, in completing the Appraisal, the Respondent was required to comply with the 2003 edition of USPAP. The conduct described in paragraphs 5 through 10 above constitutes violations of the following USPAP provisions: Ethics Rule - Record Keeping, Competency Rule, SR 1-1(a), SR 1-1(b), SR 1-1(c), SR1-2 (failure to develop an opinion of a reasonable exposure time), SR1-2(a), SR 1-2(b), SR 1-2(f), SR 1-3(a), SR 1-3(b), SR 1-4(b)(ii), SR 1-5(a), SR 2-2(b)(i), SR 2-2(b)(ii), SR 2-2(b)(v), SR 2-2(b)(vi), SR 2-2(b)(vii), SR 2-2(b)(ix), and SR 2-2(b)(x).

ORDER OF DISCIPLINE

23. Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to the following Order of Discipline:

24. From the effective date of this Consent Agreement forward, Respondent agrees that his appraisal practice will be limited to the scope of a **Certified Residential Real Estate Appraiser**.

25. Respondent shall successfully complete at least a 15 hour continuing education course on highest and best use to be completed no later than **October 20, 2005**. The hours from the course may be counted towards the continuing education requirements for Respondent's license renewal. Respondent must submit a certificate to the Executive Director showing his course attendance for the education required under this agreement.

26. The Respondent shall comply with the Uniform Standards of Professional Practice in developing and reporting all appraisal assignments.

27. This Consent Agreement and Order of Discipline is effective upon execution by the Board or its designee.

28. Respondent acknowledges that he has the right to retain counsel. Further, Respondent acknowledges that by this settlement, he waives all present and future rights to administrative or court appeal of this matter, including the right to hearing, rehearing, or judicial review.

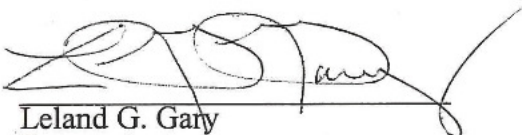
29. The parties agree that this Consent Agreement and Order of Discipline constitutes final resolution of this disciplinary matter.

30. Time is of the essence as to the terms of this agreement.

31. If Respondent fails to comply with the terms of this Consent Agreement and Order of Discipline, the Board shall properly institute proceedings for non-compliance with this Consent Agreement and Order of Discipline, which may result in suspension, revocation, or other disciplinary and/or remedial actions.

32. Any violation of USPAP resulting from an appraisal performed prior to the effective date of this Order shall not be deemed a violation of this Consent Agreement and Order of Discipline; however, the Board may, in its discretion, seek separate disciplinary action against the Respondent for such violations.

1 Dated this ^{17th}~~10~~ day of February, 2005.

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4 Leland G. Gary
5 Respondent

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8 Chairperson
9 Arizona State Board of Appraisal

10 **Original** of the foregoing filed
11 this 14 day of February, 2005, with:

12 The Arizona State Board of Appraisal
13 1400 W. Washington, Suite 360
14 Phoenix, Arizona 85007

15 **Copy** of the foregoing mailed via regular & certified US mail # 7003 1010 0002 2401974/
16 this 18th day of February, 2005, to:

17 Leland G. Gary
18 18826 N. 96th Lane
19 Peoria, Arizona 85382
20 Certified General Appraiser No. 30948

21 **Copy** of the foregoing mailed or delivered
22 this 18th day of February, 2005, to:

23 Elizabeth A. Campbell, Esq.
24 Assistant Attorney General
25 1275 W. Washington - CIV/LES
26 Phoenix, Arizona 85007
27 Attorney for the State of Arizona

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Certified General Appraiser,
No. 30948

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AND ORDER OF DISCIPLINE

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2. Respondent is the holder of License No. 30948, issued by the Board on December 21, 1998, as a Certified General Appraiser in the State of Arizona. This license permits Respondent to perform residential real property appraisals and appraisal reviews in the State of Arizona.

3. The Board has personal and subject matter jurisdiction over Respondent pursuant to A.R.S. § 32-3601, *et seq.*

FINDINGS OF FACT

4. The subject property in this case is located at West Side Highway 87 at Deer Creek in Rye, Arizona. The appraisal report has a date of value of September 12, 2003.

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7. The appraisal report did not provide an opinion of a reasonable exposure time linked to the value opinion.

8. Respondent did not properly identify the scope of work necessary to complete the assignment.

9. There was no statement as to the date of the report. Only the effective date was disclosed, and the workfile data disclosed dates after the effective date of value.

10. Respondent failed to cite the source for the appraisal report's definition of value.

11. Respondent failed to analyze the relevant legal, physical, and economic factors to the extent necessary to support the appraisal report's stated highest and best use. Respondent incorrectly relied exclusively on unsupported costs and unsupported assumptions on effective age and remaining life.

12. Respondent's cost approach was not supported by the workfile or other information in the report.

13. Respondent did not adequately adjust for or disclose the superior features of the development sales cited as comparables.

14. Statements made in the appraisal report regarding Development Property Sales No. 2 and No. 3 were misleading, and it appears that Respondent did not inspect the sales cited as comparable.

15. Respondent did not provide adequate explanation or support for the adjustments made to the commercial sales cited as comparable.

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CONCLUSIONS OF LAW

20. The conduct described in paragraphs 4 through 19 above constitutes a violation of A.R.S. §§ 32-3631(6) (violation of any of the standards of the development or communication of appraisals as provided in this chapter); and (7) (negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal). An appraiser's conduct is negligent if it falls below the recognized standard of care of good appraisal practice.

21. Pursuant to A.R.S. § 32-3635, Standards of Practice, a certified or licensed appraiser in the State of Arizona shall comply with the standards of practice adopted by the Board. The Standards of Practice adopted by the Board are codified in the Uniform Standards of Professional Appraisal Practice (“USPAP”) edition applicable at the time of the conduct described.

22. Pursuant to A.A.C. R4-46-401, in completing the Appraisal, the Respondent was required to comply with the 2003 edition of USPAP. The conduct described in paragraphs 5 through 10 above constitutes violations of the following USPAP provisions: Ethics Rule - Record Keeping, Competency Rule, SR 1-1(a), SR 1-1(b), SR 1-1(c), SR1-2 (failure to develop an opinion of a reasonable exposure time), SR1-2(a), SR 1-2(b), SR 1-2(f), SR 1-3(a), SR 1-3(b), SR 1-4(b)(ii), SR 1-5(a), SR 2-2(b)(i), SR 2-2(b)(ii), SR 2-2(b)(v), SR 2-2(b)(vi), SR 2-2(b)(vii), SR 2-2(b)(ix), and SR 2-2(b)(x).

ORDER OF DISCIPLINE

23. Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to the following Order of Discipline:

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24. Upon execution of this agreement, Respondent agrees that his Certified General Certification will be reclassified as a **Certified Residential Certification**, and Respondent's appraisal practice will be limited to the scope of a certified residential appraiser.

25. Respondent shall successfully complete at least a 15 hour continuing education course on highest and best use to be completed no later than **October 20, 2005**. The hours from the course may be counted towards the continuing education requirements for Respondent's license renewal. Respondent must submit a certificate to the Executive Director showing his course attendance for the education required under this agreement.

26. The Respondent shall comply with the Uniform Standards of Professional Practice in developing and reporting all appraisal assignments.

27. This Consent Agreement and Order of Discipline is effective upon execution by the Board or its designee.

28. Respondent acknowledges that he has the right to retain counsel. Further, Respondent acknowledges that by this settlement, he waives all present and future rights to administrative or court appeal of this matter, including the right to hearing, rehearing, or judicial review.


29. The parties agree that this Consent Agreement and Order of Discipline constitutes final resolution of this disciplinary matter.


30. Time is of the essence as to the terms of this agreement.

31. If Respondent fails to comply with the terms of this Consent Agreement and Order of Discipline, the Board shall properly institute proceedings for non-compliance with this Consent Agreement and Order of Discipline, which may result in suspension, revocation, or other disciplinary and/or remedial actions.

32. Any violation of USPAP resulting from an appraisal performed prior to the effective date of this Order shall not be deemed a violation of this Consent Agreement and Order of Discipline; however, the Board may, in its discretion, seek separate disciplinary action against the Respondent for such violations.

1 Dated this 2nd day of February, 2005.
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4 
5 Leland G. Gary
6 Respondent

7 
8 Deborah G. Pearson, Executive Director
9 Arizona State Board of Appraisal

10 **Original** of the foregoing filed
11 this 2nd day of February, 2005, with:


12 The Arizona State Board of Appraisal
13 1400 W. Washington, Suite 360
14 Phoenix, Arizona 85007

15 **Copy** of the foregoing mailed *via regular and certified mail 7003 1010 0002 2401 9819*
16 this 2nd day of February, 2005, to:

17 Leland G. Gary
18 18826 N. 96th Lane
19 Peoria, Arizona 85382
20 Certified General Appraiser No. 30948

21 **Copy** of the foregoing mailed or delivered
22 this 2nd day of February, 2005, to:

23 Elizabeth A. Campbell, Esq.
24 Assistant Attorney General
25 1275 W. Washington - CIV/LES
26 Phoenix, Arizona 85007
27 Attorney for the State of Arizona

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